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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,278	04/09/2002	Susanne Kessler	1951	9010
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743		12/20/2007	EXAMINER BROWN, COURTNEY A	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 12/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/030,278

**Applicant(s)**

KESSLER ET AL.

**Examiner**

Courtney A. Brown

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **OFFICIAL ACTION**

### ***Acknowledgement of Receipt***

Receipt of Applicant's Amendment filed on June 14, 2007 in response to a personal interview held on November 13, 2006 and in response to the Office Action dated January 17, 2007 is acknowledged.

### ***Status of Claims***

Claims 1-9 were canceled, and claims 10-20 were added, by an amendment filed on March 25, 2004. In addition, claims 10-11 and 16-17 were amended, and claims 21-24 were added, by an amendment filed on November 12, 2004. In addition, claims 10-13, 19, 21 and 22 were amended, by an amendment filed on November 1, 2005. In addition, claims 14 and 19 were cancelled, and claims 10, 13, 15, 16, 18, 20, and 21 were amended by an amendment filed on October 3, 2006. Furthermore, claims 25 to 35 were added in a supplemental amendment that was efiled on December 21, 2006 and claims 36 to 46 were added in the aforementioned Amendment filed on June 14, 2007. As a result, claims 25-46 are currently pending and therefore examined herein on the merits for patentability.

***Claim Rejections- 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the

inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The rejection of claims 10-13, 15 and 21-24 under 35 U.S.C. § 103(a) as being unpatentable over International Application Publication Number WO 98/11853 (the Greenspan '853 publication) in view of U.S. Patent 5,290,544 (the Shimono '544 patent) is hereby withdrawn in light of Applicant's cancellation of claims 10 -13, 15 to 18, and 20 to 24.

The rejection of claims 16-18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over International the Greenspan '853 publication in view of the Shimono '544 patent, and in further view of *either* Yamanaka et al., "Enzymatic Activity of Glucose Oxidase Encapsulated in Transparent Glass by the Sol-Gel Method," Chemistry of Materials, 4(3):495-497 (1992) (the Yamanaka publication); Wu et al., "Bacteriorhodopsin Encapsulated in Transparent Sol-Gel Glass: A New Biomaterial," Chemistry of Materials, 5(1):115-120 (1993) (the Wu publication); or Wang et al., "Affinity of Antifluorescein Antibodies Encapsulated Within a Transparent Sol-Gel Glass," Analytical Chemistry, 65(19):2671-2675 (1993) (the Wang publication) is hereby withdrawn in light of Applicant's cancellation of claims 10 -13, 15 to 18, and 20 to 24.

Claims 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimono et al. (US 5,290,544) in view of Greenspan (WO 98/11853).

### ***Applicant's Invention***

With respect to claims 25-28, applicant claims a method of preserving a perishable cosmetic preparation comprising: no organic chemical and bioactive glass particles with particle sizes less than or equal to 10 $\mu$ m with the cosmetic preparation containing 1 to 10 percent by weight of the bioactive glass particles wherein the bioactive glass particles consist of from 40 to 60 percent by weight of SiO<sub>2</sub>, from 10-30 percent by weight of CaO, from 10 to 35 percent by weight of Na<sub>2</sub>O, from 2 to 8 percent by weight of P<sub>2</sub>O<sub>5</sub>, from 0 to 25 percent by weight of CaF<sub>2</sub>, from 0 to 10 percent by weight of B<sub>2</sub>O<sub>3</sub>, from 0 to 8 percent by weight of K<sub>2</sub>O, and from 0 to 5 percent by weight of MgO.

With respect to claims 29-35, applicant claims a cosmetic preparation consisting of a cosmetic cream and lotion for application to the skin, a lipstick, or a make-up composition that containing: no organic chemical ;bioactive glass particles with particle sizes less than or equal to 2 $\mu$ m with the cosmetic preparation containing .1 to 7 percent by weight of the bioactive glass particles

wherein the bioactive glass particles consist of from 40 to 60 percent by weight of  $\text{SiO}_2$ , from 10-30 percent by weight of  $\text{CaO}$ , from 10 to 35 percent by weight of  $\text{Na}_2\text{O}$ , from 2 to 8 percent by weight of  $\text{P}_2\text{O}_5$ , from 0 to 25 percent by weight of  $\text{CaF}_2$ , from 0 to 10 percent by weight of  $\text{B}_2\text{O}_3$ , from 0 to 8 percent by weight of  $\text{K}_2\text{O}$ , and from 0 to 5 percent by weight of  $\text{MgO}$ ; and a liquid that contains no alcohol where the said bioactive glass particles have a refractive index that is close enough to that of said liquid so that the said bioactive glass particles are substantially invisible to an observer.

With respect to claims 36-40, applicant claims a method of preserving a perishable cosmetic preparation comprising adding : bioactive glass particles with particle sizes less than or equal to  $100\mu\text{m}$  with the cosmetic preparation containing .1 to 7 percent by weight of the bioactive glass particles wherein the bioactive glass particles consist of from from 40 to 90 percent by weight of  $\text{SiO}_2$ , from 4 to 45 percent by weight of  $\text{CaO}$ , from 0 to 10 percent by weight of  $\text{Na}_2\text{O}$ , from 2 to 16 percent by weight of  $\text{P}_2\text{O}_5$ , from 0 to 25 percent by weight of  $\text{CaF}_2$ , from 0 to 40 percent by weight of  $\text{B}_2\text{O}_3$ , from 0 to 8 percent by weight of  $\text{K}_2\text{O}$ , and from 0 to 5 percent by weight of  $\text{MgO}$ ; wherein the said bioactive glass particles contain calcium and phosphorous in relative amounts that are sufficient for formation of a hydroxyapatite layer on contact with an aqueous medium; and an aqueous or alcoholic solvent.

With respect to claims 41-46, applicant claims the improvement in a perishable cosmetic preparation comprising including : bioactive glass particles with particle sizes less than of equal to 100 $\mu$ m with the cosmetic preparation containing from .1 to 25 percent by weight of the bioactive glass particles wherein the bioactive glass particles consist of from 40 to 90 percent by weight of SiO<sub>2</sub>, from 4 to 45 percent by weight of CaO, from 0 to 10 percent by weight of Na<sub>2</sub>O, from 2 to 16 percent by weight of P<sub>2</sub>O<sub>5</sub>, from 0 to 25 percent by weight of CaF<sub>2</sub>, from 0 to 40 percent by weight of B<sub>2</sub>O<sub>3</sub>, from 0 to 8 percent by weight of K<sub>2</sub>O, and from 0 to 5 percent by weight of MgO; wherein the said bioactive glass particles contain calcium and phosphorous in relative amounts that are sufficient for formation of a hydroxyapatite layer on contact with an aqueous medium; an aqueous or alcoholic solvent; and no skin-irritating chemical preservatives or allergenic chemical preservatives.

***Determination of the scope and the content of the prior art  
(MPEP 2141.01)***

Shimono et al. teach a method of preserving a cosmetic preparation, preferably used as those containing water in a recipe, in the form of a skin lotion, make-up(foundation and eye-shadow), and lipstick, wherein the said method comprises adding to said cosmetic preparation an effective amount of from about .5 to about 2.5% of a particulate bactericidal bioactive glass composition; wherein the said particulate bactericidal bioactive glass

composition may comprise :  $B_2O_3$ ,  $SiO_2$ ,  $Na_2O$ ,  $P_2O_5$ ,  $CaO$ , and  $MgO$ ; wherein said particulate bactericidal bioactive glass composition has particulate diameters of less than or equal to about 20  $\mu m$ , preferably less than or equal to about 10  $\mu m$ , and more preferably less than or equal to about 5  $\mu m$  (abstract; column 1, lines 6-16, 38-41 and 46-53; column 2, lines 3-64; column 3, lines 3-11, 36 and 47; column 4, lines 18 and 32; column 5, line 33; column 6, lines 17 and 33; column 7, lines 9 and 27; claims 1 and 3-6).

***Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)***

In reference to claim 25-28, Shimono et al. do not teach all of the components and weight percentages of the bioactive glass composition.

Greenspan teaches a bacteriostatic bioactive glass composition comprising from 40 to 60 percent by weight of  $SiO_2$ , from 10 to 30 percent by weight of  $CaO$ , from 10 to 34 percent by weight of  $Na_2O$ , from 2 to 2 percent by weight of  $P_2O_5$ , from 0 to 25 percent by weight of  $CaF_2$ , from 0 to 10 percent by weight of  $B_2O_3$ , from 0 to 8 percent by weight of  $K_2O$ , and from 0 to 5 percent by weight of  $MgO$  ( see abstract and claims 1 and 2).

***Finding of prima facie obviousness***

***Rationale and Motivation (MPEP 2142-2143)***

It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to combine the teachings of Shimono et al. and Greenspan to devise a method of preserving a perishable cosmetic preparation comprising: no organic chemical and bioactive glass particles. One would be motivated to combine these references because the teachings of Shimono et al. show that bioactive glass is useful in cosmetic compositions such as liquid foundation, skin lotion, eyeshadow, and lipstick to provide an anti-bacterial effect. Shimono et al. provide working examples which gives the amount of bioactive glass component as claimed in the instant application along with the diameter of the bioactive glass component as claimed in the instant application, as well as the use of the components  $B_2O_3$ ,  $SiO_2$ ,  $Na_2O$ ,  $P_2O_5$ ,  $CaO$ , and  $MgO$  as claimed in the instant application. The teachings of Greenspan provide a bioactive glass composition including weight percentages that has been proven to have a bacteriostatic effect on the body, specifically the skin which is the main source of introducing bacteria to a cosmetic preparation. Thus, it would be prima facie obvious to one of ordinary skill in the art at the time the instant application was filed to combine two

compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art.” In re Kerkhoven 206 USPQ 1069, 1073. Thus, combining the cosmetic preparation as taught by Shimono with the bacteriostatic bioactive glass composition as taught by Greenspan, as claimed in the instant invention, sets forth prima facie obvious subject matter

Claims 29-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimono et al. (US 5,290,544) in view of Greenspan (WO 98/11853) and further in view of *either*: Yamanaka et al., “Enzymatic Activity of Glucose Oxidase Encapsulated in Transparent Glass by the Sol-Gel Method,” Chemistry of Materials, 4(3):495-497(1992) (the Yamanaka publication); Wu et al., “Bacteriorhodopsin Encapsulated in Transparent Sol-Gel Glass: A New Biomaterial,” Chemistry of Materials, 5(1):115-120 (1993) (the Wu publication); or Wang et al., “Affinity of Antifluorescein Antibodies Encapsulated Within a Transparent Sol-Gel Glass,” Analytical Chemistry, 65(19):2671-2675 (1993) (the Wang publication)

***Determination of the scope and the content of the prior art  
(MPEP 2141.01)***

The teachings of Shimono et al. is incorporated herein by reference and are therefore applied in the instant rejection as discussed above.

***Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)***

In reference to claims 29-35, Shimono et al. do not teach all of the components and weight percentages of the bioactive glass composition, the bioactive glass particles with sizes less than or equal to 2  $\mu\text{m}$  and a cosmetic preparation where the said bioactive glass particles have a refractive index that is close enough to that of said liquid so that the said bioactive glass particles are substantially invisible to an observer.

Greenspan teaches a bacteriostatic bioactive glass composition wherein said bioactive glass has a particle size range less than 2 microns( $\mu\text{m}$ ) wherein said composition comprises from 40 to 60 percent by weight of  $\text{SiO}_2$ , from 10 to 30 percent by weight of  $\text{CaO}$ , from 10 to 34 percent by weight of  $\text{Na}_2\text{O}$ , from 2 to 2 percent by weight of  $\text{P}_2\text{O}_5$ , from 0 to 25 percent by weight of  $\text{CaF}_2$ , from 0 to 10 percent by weight of  $\text{B}_2\text{O}_3$ , from 0 to 8 percent by weight of  $\text{K}_2\text{O}$ , and from 0 to 5 percent by weight of  $\text{MgO}$ ( see abstract and claims 1,2, and 5).

In reference to claim 35, the Yamanaka publication (page 495, column 1, paragraph 1, line 2; page 497, column 1, paragraph 2, lines 1, 16 and 17), the

Wu publication (abstract, line 2; page 115, column 1, paragraph 1, lines 2 and 3; page 120, column 2, paragraph 2, lines 2 and 3), and the Wang publication (page 2871, column 2, paragraph 2, line 3), teach bioactive glass particles having a refractive index sufficient to impart a physical property of transparency to said bioactive glass particles.

***Finding of prima facie obviousness***

***Rationale and Motivation (MPEP 2142-2143)***

It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to combine the teachings of Shimono et al. and Greenspan in view of either the Yamanaka publication, the Wu publication, or the Wang publication to devise a cosmetic preparation consisting of a cosmetic cream and lotion for application to the skin, a lipstick, or a make-up composition that containing: no organic chemical, a liquid that contains no alcohol, and bioactive glass particles that have a refractive index that is close enough to that of the said liquid so that the bioactive glass particles are substantially invisible to an observer . One would be motivated to combine these references because the teachings of Shimono et al. show that bioactive glass is useful in cosmetic compositons such as liquid foundation,

skin lotion, eyeshadow, and lipstick to provide an anti-bacterial effect.

Shimono et al. provide working examples which gives the amount of bioactive glass component as claimed in the instant application along with the diameter of the bioactive glass component as claimed in the instant application, as well as the use of the components  $B_2O_3$ ,  $SiO_2$ ,  $Na_2O$ ,  $P_2O_5$ ,  $CaO$ , and  $MgO$  as claimed in the instant application. The teachings of Greenspan provide a bioactive glass composition including weight percentages that has been proven to have a bacteriostatic effect on the body, specifically the skin which is the main source of introducing bacteria to a cosmetic preparation. A manufacturer of cosmetic preparations would immediately recognize the benefit of producing a particulate bacteriostatic bioactive glass composition that is more aesthetically pleasing in appearance to conscientious cosmetic consumers by making the particulate bacteriostatic bioactive glass composition, which is contained within said cosmetic composition, substantially invisible and undetectable. As a result, motivation and economic incentive exists for a manufacturer of a cosmetic preparation to modify the refractive index of the particulate bacteriostatic bioactive glass composition contained therein, so as to match the refractive index of said pharmaceutically acceptable carrier and thereby impart transparency to said particulate bacteriostatic bioactive glass composition, thus rendering said particulate bacteriostatic bioactive glass composition, which are present within said cosmetic composition, substantially invisible and undetectable to conscientious

cosmetic consumers. Thus, it would be prima facie obvious to one of ordinary skill in the art at the time the instant application was filed to combine the compositions each of which is taught by the prior art to be useful for the same purpose in order to form a final composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art." In re Kerkhoven 206 USPQ 1069, 1073. Thus, combining the cosmetic preparation as taught by Shimono with the bacteriostatic bioactive glass composition as taught by Greenspan in view of either the Yamanaka publication, the Wu publication, or the Wang publication s claimed in the instant invention, sets forth prima facie obvious subject matter

Claims 36-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimono et al. (US 5,290,544) in view of Greenspan (WO 98/11853) and further in view of Yli-Urpo et al (US 5, 762,950).

***Determination of the scope and the content of the prior art  
(MPEP 2141.01)***

The teachings of Shimono et al. are incorporated herein by reference and are therefore applied in the instant rejection as discussed above.

***Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)***

In reference to claim 36-46, Shimono et al. do not teach all of the components and weight percentages of the bioactive glass composition and the bioactive glass particles containing calcium and phosphorous in relative amounts that are sufficient for formation of said hydroxyapatite layer on contact with an aqueous medium.

Greenspan teaches a bacteriostatic bioactive glass composition comprising from 40 to 60 percent by weight of  $\text{SiO}_2$ , from 10 to 30 percent by weight of  $\text{CaO}$ , from 10 to 34 percent by weight of  $\text{Na}_2\text{O}$ , from 2 to 2 percent by weight of  $\text{P}_2\text{O}_5$ , from 0 to 25 percent by weight of  $\text{CaF}_2$ , from 0 to 10 percent by weight of  $\text{B}_2\text{O}_3$ , from 0 to 8 percent by weight of  $\text{K}_2\text{O}$ , and from 0 to 5 percent by weight of  $\text{MgO}$  ( see abstract and claims 1 and 2).

Yli-Urpo et al. teach a bioceramic system for delivery of a bioactive compound such as anti-infectives which may comprise a combination of bioactive glass, bioactive glass ceramic or bioactive ceramic, hydroxyapatite, one or more other calcium phosphate compound(s),  $\text{SiO}_2$ ,  $\text{Na}_2\text{O}$ ,  $\text{CaO}$ ,  $\text{P}_2\text{O}_5$ , or  $\text{B}_2\text{O}_3$ , and water ( see abstract; column 1, lines 17-30; column 3, lines 8-28 and column 4, lines 13-20).

***Finding of prima facie obviousness***

***Rationale and Motivation (MPEP 2142-2143)***

It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to combine the teachings of Shimono et al. and Greenspan in view of Yli-Urpo et al. to devise a method of preserving a perishable cosmetic preparation comprising: no organic chemical, an aqueous or alcoholic solvent, and bioactive glass particles containing calcium and phosphorus. One would be motivated to combine these references because the teachings of Shimono et al. show that bioactive glass is useful in cosmetic compositions such as liquid foundation, skin lotion, eyeshadow, and lipstick to provide an anti-bacterial effect. Shimono et al. provide working examples which gives the amount of bioactive glass component as claimed in the instant application along with the diameter of the bioactive glass component as claimed in the instant application, as well as the use of the components  $B_2O_3$ ,  $SiO_2$ ,  $Na_2O$ ,  $P_2O_5$ ,  $CaO$ , and  $MgO$  as claimed in the instant application. The teachings of Greenspan provide a bioactive glass composition including weight percentages that has been proven to have a bacteriostatic effect on the body, specifically the skin which is the main source of introducing bacteria to a cosmetic preparation. Yli-Urpo et al. provide a bioceramic system that may comprise hydroxyapatite, other calcium phosphate compounds,  $SiO_2$ ,  $Na_2O$ ,

CaO, P<sub>2</sub>O<sub>5</sub>, and B<sub>2</sub>O<sub>3</sub>, as claimed in the instant application. Thus, it would be prima facie obvious to one of ordinary skill in the art at the time the instant application was filed to combine compositions each of which is taught by the prior art to be useful for the same purpose in order to form a final composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art." In re Kerkhoven 206 USPQ 1069, 1073. Thus, combining the cosmetic preparation as taught by Shimono with the bacteriostatic bioactive glass composition as taught by Greenspan and Yli-Urpo et al., as claimed in the instant invention, sets forth prima facie obvious subject matter

***Examiner's Response to Applicant's Remarks***

Although Applicants' arguments as set forth in the aforementioned Response have been fully considered in light of the claims as currently amended, they are not persuasive. Applicant's claim amendments and the addition of claims 25 to 46 necessitated the new grounds of rejection as set forth hereinabove.

35 U.S.C. § 103(a) rejection of claims 10-13, 15 and 21-24 based on the Greenspan '853 publication and Shimono '544 patent are moot in view of the withdrawal of the aforementioned rejection.

35 U.S.C. § 103(a) rejection of claims 10-13, 15 and 21-24 based on the Greenspan '853 publication and Shimono '544 patent and in further view of

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*either* the Yamanaka publication, the Wu publication, or the Wang publication are moot in view of the withdrawal of the aforementioned rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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### ***Contact Information***

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electron Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

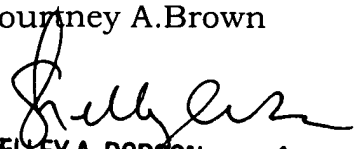
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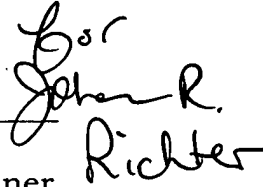


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SHELLEY A. DODSON  
PRIMARY EXAMINER

Johann R. Richter  
Supervisory Patent Examiner  
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